

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

Hamington
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FILE:

B-218367.2

DATE: April 10, 1985

MATTER OF:

Libby Corporation

DIGEST:

GAO will not consider one firm's complaint that another's bid may be mistaken, as only the contracting parties are in a position to assert rights and bring forth all necessary evidence to resolve mistake-in-bid questions. Moreover, the allegation that a bid is below cost is not a legal basis for precluding award.

Libby Corporation protests any award of a contract to Wedtech Corporation by the Army under Invitation for Bids No. DAAA09-85-B-0132. Libby contends that its own bid price accurately represents the true cost of designing and producing the complete power take-off generator system required by the solicitation, and concludes that Wedtech's lower bid must be based on a mistake.

Our Office has consistently held that only the contracting parties (here, the government and the firm in line for award) are in a position to assert rights and bring forth all necessary evidence to resolve mistake-in-bid questions. See Bill Conklin Associates, Inc., B-210927, Aug. 8, 1983, 83-2 CPD ¶ 177, and cases cited therein. The protester's speculation that Wedtech may have made a mistake in preparing its bid, does not, therefore, provide a valid basis for protesting an award. Any claim arising from such mistake would have to be raised by the mistaken bidder itself.

Regarding the protester's allegation that Wedtech's bid was unreasonably low, we note that even if the bid were found to be below cost, it would not be illegal, nor would the below-cost bid provide a basis for challenging award. Ambulancias de Emergencias, Inc., B-216936, Nov. 26, 1984, 84-2 CPD ¶ 562. Rather, the question of whether a bidder will be able to perform the contract satisfactorily is one


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which concerns the bidder's responsibility. Pursuant to section 21.3(f)(5) of our Bid Protest Regulations, 4 C.F.R. § 21.3(f)(5) (1985), our Office does not review protests concerning affirmative determinations of responsibility absent a showing that the contracting officer may have acted fraudulently or in bad faith, or that definitive responsibility criteria in the solicitation have not been met. Neither exception is alleged here.

The protester requests that a conference be held on the merits of the protest. However, no useful purpose is served by holding a conference or requiring an agency to submit a report when it is clear from the protester's submission that the protest involves a matter which we do not consider. Zimmerman Plumbing and Heating Co., Inc.--Reconsideration, B-211879.2, Aug. 8, 1983, 83-2 CPD ¶ 182. We therefore follow our practice of dismissing such protests without first seeking a report or providing an opportunity for a conference.

The protest is dismissed.


Ronald Berger
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General Counsel